

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-33655-GFK

Chapter 7

Tanya Joy Clark,

Debtor(s).

***NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY***

TO: Debtor(s) and Attorney for Debtor(s); Paul W. Bucher, Chapter 7 Trustee; U.S. Trustee; and other parties in interest.

1. Bank One Wisconsin, a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at **10:30 am on Monday, September 20, 2004**, before the Honorable Gregory F. Kishel, in Courtroom No. 228B, at the U.S. Federal Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and delivered not later than Wednesday, September 15, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Thursday, September 9, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This motion arises under 11 U.S.C. §362 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. Bank One Wisconsin seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain personal property owned by Debtor(s).

5. The petition commencing this Chapter 7 case was filed on June 22, 2004 and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. Bank One Wisconsin holds a valid, perfected interest in a 2002 Ford Focus, vehicle identification number 1FAFP34302W180579 (the "Vehicle").

7. Copies of Bank One Wisconsin's agreement with Debtor(s) (the "Contract") and evidence of perfection of Bank One Wisconsin's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

8. Payments due under the terms of the Contract for the months of July and August 2004 totaling \$829.98 plus late charges, have not been made by the Debtor(s).

9. The balance due under the Contract is \$14,693.15 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$13,000.00.

10. Bank One Wisconsin's interest is depreciating, while Debtor(s) are failing to make payments. Bank One Wisconsin does not have, and has not been offered, adequate protection of its interest in the Vehicle. There is no appreciable equity in the Vehicle and, in view of the fact that this is a Chapter 7 liquidation proceeding, the Vehicle is not necessary for an effective reorganization.

11. The failure of the Debtor(s) to make payments pursuant to the Contract or otherwise provide Bank One Wisconsin with adequate protection of its interest in the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Bank One Wisconsin to relief from the stay.

12. Bank One Wisconsin requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

13. If testimony is necessary as to any facts relevant to this motion, T. Johnson, or some other representative of Movant, will testify on behalf of Bank One Wisconsin.

14. This notice of motion and motion also serves as notice of default as may be required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before the hearing, Bank One Wisconsin will repossess the Vehicle promptly upon the Court signing the Order.

15. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Bank One Wisconsin respectfully moves the Court for an order (i) modifying the automatic stay of 11 U.S.C. §362 so as to permit Bank One Wisconsin to foreclose its interest in the Vehicle in accordance with Minnesota law, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable, and (iii) granting such other relief as may be just and equitable.

Dated: September 3, 2004

STEWART, ZLIMEN & JUNGERS

By /s/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-33655-GFK
Chapter 7

Tanya Joy Clark,

Debtor(s).

VERIFICATION

I, Tracy Johnson, a Bankruptcy Specialist of Bank One Wisconsin declare under penalty of perjury
that the following is true and correct to the best of my knowledge, information and belief:

Dated: 9/2/04


Tracy Johnson
Bankruptcy Specialist
Bank One Wisconsin

BANK ONE ARIZONA

Fax: 602-674-7194

Aug 31 2004 15:48

P.06

STATE OF ILLINOIS
CERTIFICATE OF TITLE OF A VEHICLE

VEHICLE IDENTIFICATION NO.

1FAPP34302W180579

YEAR

2002

MAKE

FORD

MODEL

BODY STYLE

4 DOOR

TITLE NO.

T2092608420

DATE ISSUED

04/02/02

ODOMETER

27

CCM

PURCHASED

NEW

PURCHASE DATE

01/23/02

MAILING ADDRESS

MOBILE HOME SQ. FT.

TYPE OF TITLE

ORIGINAL

BANK ONE WISCONSIN

POB 37264

LOUISVILLE KY 40232

LEGEND(S)

ACTUAL MILEAGE

OWNER(S) NAME AND ADDRESS

TANYA JOY CLARK

POB 296

STRONGHURST IL 61460

FIRST LIENHOLDER NAME AND ADDRESS

BANK ONE WISCONSIN

POB 37264

LOUISVILLE KY 40232

SECOND LIENHOLDER NAME AND ADDRESS

RELEASE OF LIEN

The holder of Lien on the vehicle described in this Certificate does hereby state that the lien is released and discharged.

First Name

By

Signature of Authorized Agent

Date

Last Name

By

Signature of Authorized Agent

Date

NEW LIEN ASSIGNMENT: The information below must be on an application for title and presented to the Secretary of State.

Secured Party:

Address:

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

ASSIGNMENT OF TITLE

The undersigned hereby certifies that the vehicle described in this title has been transferred to the following printed name and address:

I certify to the best of my knowledge that the odometer reading is the actual mileage of

ODOMETER READING

NO TENTHS

- ☐ 1. The mileage stated is in excess of
☐ 2. The odometer reading is not in
 WARNING-ODOMETER O.K.

Signature(s) of Seller(s)

Printed Name(s) of Seller(s)

I am aware of the above odometer certification made by seller.

Signature(s) of Buyer(s)

Print.

1210002417301 08 153

fp0034

J2 FORD FOCUS-4 CYL.

TANYA JOY CLARK

OPEN

104

-18/02



I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that according to the records on file with my Office, the person or entity named herein is the owner of the vehicle described herein, which is subject to the above named liens and encumbrances, if any.
 IN WITNESS WHEREOF, I HAVE AFFIXED MY SIGNATURE AND
 THE GREAT SEAL OF THE STATE OF ILLINOIS, AT SPRINGFIELD.

D26974442

CONTROL NO.

Jesse White
 JESSE WHITE, Secretary of State



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.04-33655-GFK
Chapter 7

Tanya Joy Clark,

Debtor(s).

***MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY***

Bank One Wisconsin submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Bank One Wisconsin holds a perfected interest in a 2002 Ford Focus with a vehicle identification number 1FAFP34302W180579 (the "Vehicle"). Payments due under the terms of the Contract for the months of July and August 2004 totaling \$829.98 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$14,693.15 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$13,000.00.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. Section 362(d)(1). No payments have been made as required by the Contract between the Debtor(s) and Bank One Wisconsin has otherwise not been provided with adequate protection of interest in the Vehicle. Such failure constitutes cause, within the meaning of Section 362(d)(1), entitling Bank One Wisconsin to relief from the stay. United Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., Ltd. (In re Timbers of Inwood Assoc., Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).

Pursuant to Section 362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where no equity exists and the property is not necessary to an effective reorganization. In re Albany Partners, Ltd., 749 F.2d 670 (11th Cir. 1984). The balance due under the Contract is \$14,693.15 as of the date hereof. The fair market value of the Vehicle is approximately \$13,000.00. Clearly, no appreciable equity exists in the Vehicle. Finally, as this a Chapter 7 case, the Vehicle is not necessary to an effective reorganization.

CONCLUSION

For all the reasons set forth herein, Bank One Wisconsin is entitled to an order terminating the automatic stay of 11 U.S.C. § 362 and authorizing it to foreclose its interest in the Vehicle in accordance with Minnesota law.

Dated: September 3, 2004

STEWART, ZLIMEN & JUNGERS

By /s/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Tanya Joy Clark

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-33655-GFK

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

United States Trustee
Suite 1015
300 South 4th Street
Minneapolis, MN 55415

(Attorney for Debtor(s))
G. Martin Johnson
3800 W. Old Shakopee Rd.
Bloomington, MN 55431

(Trustee)
Paul W. Bucher
PO Box 549
Rochester, MN 55903-0549

(Debtor(s))
Tanya Joy Clark
208 1/2 4th Street SW
New Prague, MN 56071

And I declare, under penalty of perjury, that the foregoing is true and correct.

Date: September 3, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-33655-GFK
Chapter 7

Tanya Joy Clark,

Debtor(s).

***ORDER GRANTING
MOTION FOR RELIEF FROM STAY***

The above-entitled matter came before the Court for hearing on Monday, September 20, 2004 on the motion of Bank One Wisconsin seeking relief from the automatic stay of 11 U.S.C. §362.

Appearances were noted in the Court's record. Based upon the proceedings on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Bank One Wisconsin to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. §362 is immediately terminated as to Bank One Wisconsin, and Bank One Wisconsin is authorized to foreclose its interest in the subject 2002 Ford Focus, vehicle identification number 1FAFP34302W180579 in accordance with Minnesota law. Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: _____

Gregory F. Kishel
United States Bankruptcy Judge